

AMENDED IN SENATE JUNE 22, 2005

AMENDED IN SENATE JUNE 6, 2005

AMENDED IN SENATE MAY 19, 2005

AMENDED IN ASSEMBLY MARCH 10, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

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**ASSEMBLY BILL**

**No. 204**

**Introduced by Assembly Member Harman**

January 31, 2005

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An act to amend Sections 249.5, 249.6, and 249.8 of the Probate Code, relating to decedents' estates.

LEGISLATIVE COUNSEL'S DIGEST

AB 204, as amended, Harman. Decedents' estates: posthumously conceived children.

(1) Existing law provides for the distribution of a decedent's estate among heirs and beneficiaries. Existing law provides that, for purposes of determining rights to property to be distributed upon the death of a decedent, a child of the decedent conceived after the decedent's death, other than a child conceived as a result of human cloning, is deemed to have been born in the decedent's lifetime if the child or his or her representative proves by clear and convincing evidence that specified conditions are satisfied. Those conditions include the requirement that the decedent specify in writing that his or her genetic material shall be used for posthumous conception of a child of the decedent, and that the specification may be revoked or amended only by a signed writing.

This bill would require that specification, and any revocation or amendment thereof, to be dated. The bill would additionally delete a

requirement that the specification, and revocation or amendment thereof, be signed by at least one competent witness.

(2) Existing law, for purposes of determining rights to property to be distributed upon a decedent's death, requires the person designated by the decedent to use his or her genetic material to be either the spouse or registered domestic partner of the decedent or some other person designated by the decedent, as specified. This provision also requires a posthumously conceived child or his or her representative to give written notice by certified mail that the decedent's genetic material was available for posthumous conception.

This bill would revise that provision to delete the reference to the spouse or registered domestic partner and would require the person designated by the decedent to control the use of the genetic material to give that written notice.

(3) Existing law provides that a person with the power to control the distribution of the decedent's property or death benefits does not incur liability for making a distribution or payment if that distribution or payment occurred prior to receiving notice or actual knowledge of the existence of genetic material.

This bill would also provide that each person to whom payment, delivery, or transfer of the decedent's property is made shall be personally liable to any person ~~having who has~~ a superior right ~~by testate or intestate succession from the decedent to the payment, delivery, or transfer of the decedent's property.~~ The bill would specify the limitations on that liability and would provide that an action to impose liability shall be barred 3 years after distribution to the holder of the decedent's property or 3 years after discovery of fraud, whichever is later.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 249.5 of the Probate Code is amended  
2 to read:

3 249.5. For purposes of determining rights to property to be  
4 distributed upon the death of a decedent, a child of the decedent  
5 conceived and born after the death of the decedent shall be  
6 deemed to have been born in the lifetime of the decedent, and  
7 after the execution of all of the decedent's testamentary

1 instruments, if the child or his or her representative proves by  
2 clear and convincing evidence that all of the following conditions  
3 are satisfied:

4 (a) The decedent, in writing, specifies that his or her genetic  
5 material shall be used for the posthumous conception of a child  
6 of the decedent, subject to the following:

7 (1) The specification shall be signed by the decedent and  
8 dated.

9 (2) The specification may be revoked or amended only by a  
10 writing, signed by the decedent and dated.

11 (3) A person is designated by the decedent to control the use  
12 of the genetic material.

13 (b) The person designated by the decedent to control the use of  
14 the genetic material has given written notice by certified mail,  
15 return receipt requested, that the decedent's genetic material was  
16 available for the purpose of posthumous conception. The notice  
17 shall have been given to a person who has the power to control  
18 the distribution of either the decedent's property or death benefits  
19 payable by reason of the decedent's death, within four months of  
20 the date of issuance of a certificate of the decedent's death or  
21 entry of a judgment determining the fact of the decedent's death,  
22 whichever event occurs first.

23 (c) The child was in utero using the decedent's genetic  
24 material and was in utero within two years of the date of issuance  
25 of a certificate of the decedent's death or entry of a judgment  
26 determining the fact of the decedent's death, whichever event  
27 occurs first. This subdivision does not apply to a child who  
28 shares all of his or her nuclear genes with the person donating the  
29 implanted nucleus as a result of the application of somatic  
30 nuclear transfer technology commonly known as human cloning.

31 SEC. 2. Section 249.6 of the Probate Code is amended to  
32 read:

33 249.6. (a) Upon timely receipt of the notice required by  
34 Section 249.5 or actual knowledge by a person who has the  
35 power to control the distribution of either the decedent's property  
36 or death benefits payable by reason of the decedent's death, that  
37 person may not make a distribution of property or pay death  
38 benefits payable by reason of the decedent's death before two  
39 years following the date of issuance of a certificate of the

1 decedent's death or entry of a judgment determining the fact of  
2 decedent's death, whichever event occurs first.

3 (b) Subdivision (a) does not apply to, and the distribution of  
4 property or the payment of benefits may proceed in a timely  
5 manner as provided by law with respect to, any property if the  
6 birth of a child or children of the decedent conceived after the  
7 death of the decedent will not have an effect on any of the  
8 following:

9 (1) The proposed distribution of the decedent's property.

10 (2) The payment of death benefits payable by reason of the  
11 decedent's death.

12 (3) The determination of rights to property to be distributed  
13 upon the death of the decedent.

14 (4) The right of any person to claim a probate homestead or  
15 probate family allowance.

16 (c) Subdivision (a) does not apply to, and the distribution of  
17 property or the payment of benefits may proceed in a timely  
18 manner as provided by law with respect to, any property if the  
19 person named in subdivision (a) of Section 249.5 sends written  
20 notice by certified mail, return receipt requested, that the person  
21 does not intend to use the genetic material for the posthumous  
22 conception of a child of a decedent. This notice shall be signed  
23 by the person named in paragraph (3) of subdivision (a) of  
24 Section 249.5 and at least one competent witness, and dated.

25 (d) A person who has the power to control the distribution of  
26 either the decedent's property or death benefits payable by reason  
27 of the decedent's death, shall incur no liability for making a  
28 distribution of property or paying death benefits if that person  
29 made a distribution of property or paid death benefits prior to  
30 receiving notice or acquiring actual knowledge of the existence  
31 of genetic material available for posthumous conception purposes  
32 or the written notice required by subdivision (b) of Section 249.5.

33 (e) Each person to whom payment, delivery, or transfer of the  
34 decedent's property is made ~~pursuant to this section~~ is personally  
35 liable to ~~any person having~~ *a person who, pursuant to Section*  
36 *249.5, has a superior right by testate or intestate succession from*  
37 ~~the decedent to the payment, delivery, or transfer of the~~  
38 *decedent's property*. The aggregate of the personal liability of a  
39 person shall not exceed the fair market value, valued as of the  
40 time of the transfer, of the property paid, delivered, or transferred

1 to the person under this section, less the amount of any liens and  
2 encumbrances on that property at that time.

3 (f) In addition to any other liability a person may have  
4 pursuant to this section, any person who fraudulently secures the  
5 payment, delivery, or transfer of the decedent's property pursuant  
6 to this section shall be liable to the person having a superior right  
7 for three times the fair market value of the property.

8 (g) An action to impose liability under this section shall be  
9 barred three years after the distribution to the holder of the  
10 decedent's property, or three years after the discovery of fraud,  
11 whichever is later. The three-year period specified in this  
12 subdivision may not be tolled for any reason.

13 SEC. 3. Section 249.8 of the Probate Code is amended to  
14 read:

15 249.8. Notwithstanding Section 249.6, any interested person  
16 may file a petition in the manner prescribed in Section 248 or  
17 17200 requesting a distribution of property of the decedent or  
18 death benefits payable by reason of decedent's death that are  
19 subject to the delayed distribution provisions of Section 249.6.  
20 The court may order distribution of all, or a portion of, the  
21 property or death benefits, if at the hearing it appears that  
22 distribution can be made without any loss to any interested  
23 person, including any loss, either actual or contingent, to a  
24 decedent's child who is conceived after the death of the decedent.  
25 The order for distribution shall be stayed until any bond required  
26 by the court is filed.